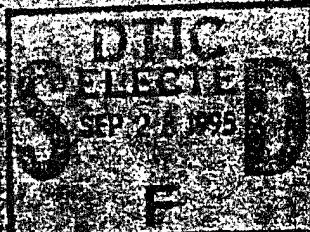


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CONFIDENTIAL  
INVESTIGATIVE  
PERSONNEL



Special Authorities  
Under the  
Demonstration Project  
at Commerce



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General Government Division

B-249136

July 13, 1992

## FEDERAL PERSONNEL:

### SPECIAL AUTHORITIES UNDER THE DEMONSTRATION PROJECT AT COMMERCE

The Honorable William L. Clay  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives

Dear Mr. Chairman:

This briefing report responds to one of your requests for information on the personnel management demonstration project at the Commerce Department's National Institute of Standards and Technology (NIST). As discussed with your office during a July 10, 1992, briefing, we compared the personnel management authorities available under the demonstration project with those available to NIST under other federal personnel laws, regulations, and provisions. We made our comparison with specific regard to the recent enactment of the Federal Employees Pay Comparability Act of 1990 (FEPCA). FEPCA made a number of changes in the federal pay system, including a fixed formula for phasing in annual increases and locality-based pay adjustments to remedy disparities with nonfederal pay. We will respond in the future to your request for our views on the independent contractor's evaluations of the demonstration project.

#### RESULTS IN BRIEF

According to NIST, FEPCA should not have a significant effect on the demonstration project, since many of the authorities contained in the project are not covered in FEPCA. However, our comparison of the demonstration project authorities with federal personnel law, regulations and other provisions, as summarized in table 1, shows that a number of authorities used by NIST under the demonstration project are also generally available to NIST and other agencies using other federal personnel authorities. The demonstration project, however, provides NIST with special authorities in such areas as pay banding and pay-for-performance. It also allows NIST to set salary levels based on its own survey of private sector compensation; however, NIST has not used this authority.

Availability Codes

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A-1	

Table 1: NIST and Federal Personnel Law

Authority	Available under NIST demo project?	Available under Title 5/FEPCA?
Pay banding	Yes	Limited
Pay-for-performance	Yes	Limited
Flexible entry-level pay	Yes	Limited
Modified qualification standard, new occupational series	Yes	Limited
Sabbaticals	Yes	Limited
Supervisory pay differential	Yes	Limited
Competitive pay based on total compensation	Yes	No
Agency-designed classification standards	Yes	No
3 year probation	Yes	No
Agency-based hiring	Yes	Yes
Direct hiring	Yes	Yes
Reduction-in-force rules	Yes	Yes
Recruitment and retention bonuses	Yes	Yes
Paid advertising	Yes	Yes
Special pay rates for hard- to-fill positions or specially qualified candidates	No	Yes
Relocation allowance	No	Yes
Time off as award	No	Yes

BACKGROUND

In Public Law 99-574, Congress specifically mandated the NIST demonstration project in order to enhance NIST's ability to recruit and retain highly qualified personnel, especially in high-technology fields. The act gave NIST authority to set its white-collar employees' salaries, with specific limits, to be competitive with those available outside the government and to adjust individual employees' salaries on the basis of job performance.

NIST provides scientific and technological services to industry and government. The demonstration project covers about 3,000 employees at NIST's two locations: Gaithersburg, Maryland, and Boulder, Colorado. While the project does technically include Senior Executive Service personnel and technical personnel above grade 15, they are not affected by the project's personnel systems.

The act authorizing the demonstration project required NIST and the Office of Personnel Management (OPM) to jointly design the project and NIST to carry it out. Using personnel management authorities set out in the act and by exercising other authorities, NIST and OPM designed the project to

- improve hiring and allow NIST to compete for high-quality researchers more effectively through such means as agency-based and direct hiring of job applicants (instead of hiring through OPM), selective use of higher entry salaries, and selective use of recruiting bonuses;
- motivate and retain staff through such means as higher pay potential, pay-for-performance, and selective use of retention allowances, which employees can receive as an incentive to remain with NIST rather than accept nonfederal job offers;
- strengthen the managers' role in personnel management through delegation of certain personnel authorities to them;
- increase the efficiency of personnel systems through such means as installation of a simplified job classification system and the reduction of guidelines, steps, and paperwork;

- keep total employee compensation at the level it would have reached under the governmentwide system without the project; and
- serve as a model that can be replicated in whole or in part by other federal agencies.

In July 1991, NIST published a report entitled NIST Personnel Management Demonstration Project: Design, Implementation, and Accomplishments. The report presented the history, features, and accomplishments of the demonstration project and a comparison of the project with the provisions of FEPCA. On the basis of this comparison, NIST concluded that FEPCA did not supersede the demonstration project or reduce its usefulness, because the demonstration project design covered a number of areas that were not covered by FEPCA.

#### OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our work was to compare personnel management authorities available to NIST under the demonstration project with those available to other federal agencies under current federal personnel provisions and to review the comparison of NIST with FEPCA presented by NIST in July 1991. We did not review the actual use of personnel authorities by NIST or by other federal agencies. To accomplish our objective, we reviewed the authorizing statute for the NIST demonstration project and Title 5 of the U.S. Code, which contains federal personnel laws including FEPCA. We also reviewed the Code of Federal Regulations, the Federal Personnel Manual, and other OPM guidance. We then analyzed the comparison of authorities made by NIST in its July 1991 report in terms of our own comparisons.

We discussed our analysis with OPM and NIST officials responsible for the demonstration project. We incorporated their technical suggestions where appropriate in finalizing the report.

We did our work between February and June 1992 in accordance with generally accepted government auditing standards.

#### COMPARISON OF PROJECT AUTHORITIES WITH OTHER PERSONNEL AUTHORITIES

As noted above, in its July 1991 report NIST compared the demonstration project authorities with those granted by FEPCA, showing that many features of the project are not covered by FEPCA. However, a comparison of the project authorities with FEPCA alone does not take into consideration the other provisions of Title 5 of the U.S. Code, implementing regulations or OPM administrative guidance.

Appendix 1 compares major features of the NIST demonstration project with both FEPCA and other federal personnel provisions. It shows that in many respects, what NIST can do under its demonstration project authority it could do, although in a somewhat different form, under Title 5. Many of the authorities contained in Title 5 are granted to OPM and can be delegated to other agencies, such as NIST, upon request. However, NIST has special authorities under the demonstration project for pay banding and pay-for-performance and for a system of pay based on private sector compensation.

The major distinguishing features of the NIST demonstration project are discussed below.

#### Pay Banding

The design for the NIST demonstration centers around the grouping of employees below the SES level into career paths and pay bands. Employees are placed into one of four career paths: Scientific and Engineering, Scientific and Engineering Technician, Administrative, and Support. As shown by figure 1, each path has five pay bands that combine one or more General Schedule (GS) grades.

Figure 1: NIST Career Paths and Pay Bands

CAREER PATHS	PAY BANDS				
SCIENTIFIC AND ENGINEERING (Pay Plan: ZP)	I	II	III	IV	V
SCIENTIFIC AND ENGINEERING TECHNICIAN (Pay Plan: ZT)	I	II	III	IV	V
ADMINISTRATIVE (Pay Plan: ZA)	I	II	III	IV	V
SUPPORT (Pay Plan: ZS)	I	II	III	IV	V
Corresponding GS Grade	1	2	3	4	5
	6	7	8	9	10
	11	12	13	14	15

Source: Office of Personnel and Civil Rights, NIST.

Within these pay bands, NIST management has the ability to grant pay-for-performance increases, discussed below, up to the upper limit of the band and can also start newly hired employees at any salary within the band. Thus, NIST has much greater pay-setting flexibility than it would under the GS system, which generally limits increases to step-by-step progression within each grade. It also restricts entry-level pay to step one of the grade except for candidates with superior qualifications.

Pay-for-Performance

The NIST demonstration project provides a system of pay-for-performance for covered NIST employees. They receive pay increases based on annual performance ratings, which produce numerical scores for employees. These scores are used to rank employees of the same pay band within a given organizational unit. The unit manager can then decide on pay increases based on these rankings, and can also award cash bonuses, within certain prescribed limits. As discussed on page 8, NIST employees also receive the same general increases as other federal employees.

Currently, federal personnel law provides for a pay-for-performance program on a limited basis. Under the Performance Management and Recognition System, supervisors and managers in grades GM-13 through 15 may receive merit-based pay increases based on an employee rating and position in the pay range. They are also eligible for cash bonuses in addition to the general increases granted to all federal employees. For employees under the General Schedule, the Government Employees' Incentive Awards Act of 1954 authorized recognition and cash payments for superior performance. The Federal Salary Reform Act of 1962 authorized quality step increases for high-quality performance and the withholding of regular within-grade increases for an unacceptable level of performance.

FEPCA mandated the creation of a Pay-for-Performance Labor-Management Committee to study the feasibility of extending the concept of pay-for-performance to all grade levels. In a November 1991 report, the committee concluded that given a firm management commitment to such actions as limiting quality step increases to superior performers and denying regular step increases to unsatisfactory performers, the General Schedule provisions for within-grade salary adjustments could function effectively as a pay-for-performance system. The committee recommended that federal agencies be given authority to design and administer individual pay-for-performance programs outside the current statutory demonstration project authority.

Other Compensation Issues

The NIST demonstration project legislation required NIST to make annual compensation comparisons to the private sector. It defined compensation as the total value of basic pay, bonuses, allowances, and benefits, such as health insurance, life insurance, retirement, and leave. The legislation required the NIST Director to raise the minimum and maximum salaries for each pay band by either the general percentage increase granted under the General Schedule or the percentage that the annual survey reported necessary to match private sector compensation, whichever was smaller. The legislation also gave the NIST Director the option, if the general increase was smaller, to provide a further increase up to the percentage derived by the annual survey to the extent funds are available for that purpose.<sup>1</sup>

If NIST employees were in fact receiving annual increases to maintain compensation comparability with the private sector, they would receive more timely and complete comparability adjustments than the phased-in approach for other federal employees. Under FEPCA, federal employees are to be brought up to 95 percent of comparability on a locality basis only in terms of salaries, and this will gradually occur over the 1994 to 2002 time period. However, NIST employees have not been receiving increases based on the NIST surveys. NIST stated in its July 1991 report that due to budget limitations it has instead given the annual federal comparability increase to its employees. Since the inception of the NIST demonstration project, NIST management has endeavored to keep budget outlays for personnel costs at the same level they would have been if there had been no demonstration project.<sup>2</sup>

NIST's approach to paying higher salaries to supervisors differs somewhat from that used under the General Schedule. NIST provides 3 percent higher base pay for scientific and engineering supervisors, an additional 3 percent higher base pay for scientific and engineering division chiefs, and 6 percent higher pay band ceilings for all supervisors. Under FEPCA, GS supervisors who supervise non-GS employees earning a higher salary than the supervisor can be given supervisory differentials

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<sup>1</sup>The NIST demonstration project legislation did not authorize the Director to make changes in the benefits provided NIST employees.

<sup>2</sup>In an October 7, 1991, letter to NIST, OPM extended the NIST demonstration project until September 30, 1995. In this letter, OPM also informed NIST that the annual process of surveying private sector compensation and calculating comparability increases need not be included in the extension.

of up to 3 percent. Further OPM guidance provides that GS supervisors of three or more GS employees may have their positions classified up to three grades higher than the grades of those being supervised.

NIST can also offer higher top salaries than agencies under the General Schedule. It can pay up to Level IV of the Executive Schedule, which is currently \$112,100 per year.<sup>3</sup> This is also the maximum for SES employees; under the General Schedule, the top salary for non-SES employees is \$83,502 annually, or \$90,182 in the three areas that currently receive 8 percent locality adjustments. Non-SES employees can receive salaries above this level if special pay rates are used, but such rates can be used only in special circumstances involving hard-to-fill positions or the need to recruit and retain highly qualified individuals for certain positions.

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As arranged with your office, we are sending copies of this report to other Committees and Members of Congress, the Secretary of Commerce, the Director of NIST, and the Director of OPM. We will also make copies available to others upon request.

Major contributors to this report are listed in appendix II. Please contact me on (202) 275-5074 if you or your staff have any questions concerning the report.

Sincerely yours,

*Bernard L. Ungar*

Bernard L. Ungar  
Director, Federal Human Resource  
Management Issues

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<sup>3</sup>NIST has not used this authority to change the salary level of its non-SES employees. It has raised the salary of division chiefs and group leaders in the top band above the GS maximum to \$88,587 for division chiefs and \$86,007 for group leaders.

COMPARISON OF NIST DEMONSTRATION PROJECT PERSONNEL AUTHORITIES  
WITH FEDERAL PERSONNEL LAW

Authority	NIST	FEPICA	Other federal personnel law	Comment
Pay banding	Five bands in four career paths	Pay Agent may establish special occupational pay systems	No provision	
Pay-for-Performance	White-collar employee pay increases determined on basis of performance scores. Employees may also receive cash bonuses	Pay-for-Performance Labor Management Committee established to study pay-for-performance	Performance Management and Recognition System (PMRS) provides for cash bonuses and merit-based increases for supervisors and managers in grades 13 through 15	General Schedule provides fixed within-grade increases for satisfactory or better performance; quality step increases for sustained superior performance
Competitive pay rates	Annual study of private sector pay and benefits; NIST can raise salaries annually to meet private sector levels	Locality pay rates with 95 percent comparability to be achieved over the 1994-2002 period	No provision	NIST employees have received same increases as General Schedule due to budget limitations
Entry-level pay	Pay for new hires can be set anywhere in pay band	Agencies can authorize pay above minimum rate of the grade for persons with superior qualifications or to meet a critical agency need	No provision	Provision applied only to GS-11 or above prior to FEPICA

## APPENDIX I

## APPENDIX I

Authority	NIST	FEPCA	Other federal personnel law	Comment
Special pay authority	No provision in demonstration project	The President may authorize salary rates up to 30 percent higher than grade level maximum for hard-to-fill positions	No provision	NIST uses OPM pay rate ceilings to set ceilings of scientific and engineering pay bands
Critical positions	No provision in demonstration project	OMB in consultation with OPM may authorize pay up to level I of the Executive Schedule for up to 800 positions in order to recruit or retain a highly qualified expert	No provision	
Position Classification	Five generic NIST-designed classification standards; automated classification system; delegation of classification authority to line managers	No provision	OPM classification standards must be adhered to for positions under General Schedule.	Automation, delegation, agency-based guides are possible under the Federal Personnel Manual.
Supervisory pay differential	3 percent or 6 percent higher base pay for supervisory scientists and engineers and 6 percent higher pay ceilings for all supervisors	Up to 3 percent higher pay available to GS supervisors of non-GS employees who earn more than supervisor's regular salary	No provisions	According to OPM guidance, positions supervising 3 or more people are generally classified at higher grade

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Authority	NIST	FEPCA	Other federal personnel law	Comment
Agency-based hiring	NIST maintains its own register and administers the competitive hiring process	No provision	Through OPM delegation agencies can maintain competitive hiring registers	
Direct hiring	NIST managers can hire for hard-to-fill positions without using competitive registers	No provision	No provision	According to the Federal Personnel Manual, OPM can delegate direct-hire authority for any hard-to-fill positions
Recruitment and retention bonuses	Up to \$10,000	Up to 25 percent of base pay	No provision	
Relocation allowance	No provision under demonstration project	Up to 25 percent of base pay if necessary to fill a position	No provision	
Paid recruitment advertising	Authorized	No provision		Authorized in Federal Personnel Manual
Standard probation period	Up to 3 years for scientists and engineers	No provision	1 year	
Reduction-in-force	Bumping and retreating restricted to career paths in geographic area; employees cannot bump more than one band below current level	No provision	Bumping and retreating restrictions limit downgrading to 3 grade levels in the employee's career path and/or jobs agencies determine are similar	

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Authority	NIST	FEPCA	Other federal personnel law	Comment
Modified qualification standard, new occupational series	NIST can create qualification standards and occupational series different from OPM standards and series	No provision		OPM can authorize, according to the Federal Personnel Manual
Sabbaticals	NIST can grant sabbaticals to any employee	No provision	Sabbaticals available to SES employees	
Time off as award	No provision under demonstration project	Agencies can grant time off without charged leave as an incentive award	No provision	

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